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SAN FRANCISCO DISTRICT

US Army Corps  
of Engineers

# PUBLIC NOTICE

Regulatory Branch  
333 Market Street  
San Francisco, CA 94105-2197

NUMBER: 26525N      DATE: April 10, 2002  
RESPONSE REQUIRED BY: May 10, 2002

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PERMIT MANAGER Kelley Reid    PHONE: 707-443-0855- kreid@spd02.usace.army.mil

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**1. INTRODUCTION:** The East Side Property Owners (Contact: Mr. Ronald E. Plechaty at P.O. Box 2051, Crescent City, California 95531 or phone 707-465-1000), the Pacific Shores California Water District, the Tolowa Nation and the County of Del Norte have applied for a Department of the Army permit to breach, over a ten year period, the sandbar separating Lake Talawa and Lake Earl from the Pacific Ocean, and sidecast excavated material onto the sandbar, in Del Norte County, California. Discharges of dredged or fill into wetlands or other waters of the U.S. are regulated by the Army Corps of Engineers (Corps) under Section 404 of the Clean Water Act. This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). **Please note that this is a separate and distinct project from the recently permitted proposal to breach the lagoon at 8.0 feet requested by California Department of Fish and Game (CDF&G) (Corps file no. 25751N).**

**2. PROJECT DESCRIPTION:** As shown in the attached drawings, the applicant plans to breach an unvegetated sandbar with a bulldozer, creating a channel approximately 260 feet long and approximately 20 feet wide. Approximately 1700 cubic yards of sand would be sidecast on either side of the breach for the initial breach. The volume of sand displaced by the erosive force of the out-flowing lagoon waters is estimated to be less than 350 cubic yards per breach. Breaching would occur whenever the water levels rise above 5.0 feet mean sea level (MSL). The proposed breach would occur on property owned by the State Lands Commission and managed by and under lease to CDF&G in the NW quarter of Section 31, T17N-R1W, about 4 miles north of Crescent City, Del Norte County, California.

**3. SITE DESCRIPTION:** Lake Earl, which is more accurately two basins connected by a deep (18 foot) narrow channel, is a coastal lagoon separated from the Pacific Ocean by a narrow unvegetated beach strand and active sand dune. Lake Talawa, the smaller of the two basins, is closer to the Pacific Ocean.

Depending on currents, tides, winds, and other climatic conditions, the strand and dune separating Lake Talawa from the Pacific Ocean may rise to 15.0 feet MSL, but usually reaches 10-12 feet MSL. Consistently since 1976, and intermittently before, the sand barrier has been breached during the winter months, allowing the lagoon's water to flow into the Pacific Ocean. Since 1991, the staff at the Lake Earl Wildlife Area has maintained records on water levels and breach timing. Although local landowners have breached the barrier over the past 70-100 years to drain the lake, historical records are inconsistent. Since colonization of the area, the practice of draining the lake seems to have been to maintain additional pastureland around the lake, although there were many years when an elevated lake level was maintained for lumber interests.

**4. PURPOSE AND NEED:** The applicants state that the purpose of the five-foot breach is to:

- Prevent the saturation of county roadbeds; prevent any restrictions to private property access.
- Prevent impacts to Native American sites including inundation and erosion of burial sites caused by higher water levels.
- Prevent water from standing in the bottom of the old Fort Dick Dump.
- Prevent flooding, saturation, and destruction of private property, such as fences, water wells, septic systems and underground utilities.

- Allow private landowners to continue historical uses, including grazing and haying of their property down to 5.0 ft MSL.
- Allow more grazing land for Aleutian Canada geese.
- Protect anadromous fish runs.

**5. STATE APPROVALS:** Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), an applicant for a Corps permit must obtain a State water quality certification or waiver before a Corps permit may be issued. No Corps permit will be granted until the applicant obtains the required certification or waiver. A waiver shall be explicit, or it will be deemed to have occurred if the State fails or refuses to act on a valid request for certification within 60 days after the receipt of a valid request, unless the District Engineer determines a shorter or longer period is reasonable for the State to act.

Those parties concerned with any water quality issues that may be associated with this project should write to the Executive Officer, California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Santa Rosa, California 95403-1064, by the close of the comment period of this public notice.

Section 307(c) of the Coastal Zone Management Act of 1972, as amended (16 USC 1456(c)) requires the applicant for a Corps permit for an activity in the State's coastal zone to furnish a certification that the proposed activity will comply with the State's coastal zone management program. Generally, no permit will be issued until the California Coastal Commission has concurred with the non-federal applicant's certification. If the California Coastal commission fails to concur or object to a certification statement from the applicant within six months, then the state agency concurrence shall be conclusively presumed (33 CFR Part 320.3(b)).

Since the breach site would occur on state land, authorization from CDF&G and State Lands Commission may be required.

## **6. COMPLIANCE WITH VARIOUS FEDERAL LAWS:**

**National Environmental Policy Act of 1969 (NEPA):** At the conclusion of the public comment period, the Corps will

assess the environmental impacts of the action proposed in accordance with the requirements of the National Environmental Policy Act of 1969 (Public Law 91-190), and pursuant to Council on Environmental Quality's Regulations, 40 CFR 1500-1508, and Corps of Engineers' Regulations, 33 CFR 230 and 325. The final NEPA analysis will normally address the direct, indirect and cumulative impacts that result from regulated activities within the jurisdiction of the Corps and other non-regulated activities the Corps determines to be within its purview of Federal control and responsibility to justify an expanded scope of analysis for the NEPA purposes. The final NEPA analysis will be incorporated in the decision documentation that provides the rationale for issuing or denying a Department of the Army permit for the project.

**Endangered Species Act of 1973 (ESA):** Based upon previous consultations with the U.S. Fish and Wildlife Service, there are numerous federally listed threatened or endangered species within the Lake Earl project area. The ranges for the endangered California brown pelican (*Pelecanus occidentalis californicus*), western lily (*Lilium occidentale*), tidewater goby (*Eucyclogobius newberryi*) and federally threatened Oregon silverspot butterfly (*Speyeria zerene hippolyta*), western snowy plover (*Charadrius alexandrinus nivosus*), and bald eagle (*Haliaeetus leucocephalus*) all include the subject project area. Inasmuch as some of these species may be adversely affected by the proposed project, formal consultation will be required with USFWS.

Additionally, the Corps has had recent consultation with National Marine Fisheries Service (NMFS) and agrees that the Lake Earl project area includes designated critical habitat for Southern Oregon/Northern California Coast (SONCC) Coho Salmon (*Onchorynchus kisutch*). Further consultation with NMFS will be required to determine whether the proposed activity will adversely affect coho or its designated critical habitat.

**Magnuson-Stevens Fishery Conservation and Management Act of 1996** requires a Federal agency to consult with NMFS on all actions, or proposed actions, permitted, funded or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). EFH is defined as "those waters and substrate necessary to (federally managed) fish for spawning, breeding, feeding or growth to maturity."

**National Historic Preservation Act of 1966 (NHPA):** Based on a review of survey data on file with various City, State, Federal, and Tribal agencies, there are cultural resources known to occur in the Lake Earl and Lake Talawa area. The Corps will initiate Section 106 consultation with State Historic Preservation Officer and the Tribal councils for the area to take into account any construction-related impacts to these resources.

**7. COMPLIANCE WITH THE 404 (B) (1) GUIDELINES:** Projects resulting in the discharge of dredged or fill material into waters of the United States must comply with the Guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b) of the Clean Water Act (33 U.S.C. 1344(b)). An evaluation pursuant to the guidelines indicates the project is dependent on location between the Pacific Ocean and the Lake Talawa. The applicants state that there are no practicable alternatives for their project. Nevertheless, the applicant and project manager must explore and consider less environmentally damaging practicable alternatives to the project that would avoid or minimize the impacts to waters of the United States and other resources. The applicants have not submitted an Analysis of Alternatives and have been informed that such an Analysis is required and will be reviewed for compliance with the guidelines. When complete, the Analysis of Alternatives will be available for review in our office.

**8. PUBLIC INTEREST EVALUATION:** The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts, which the proposed activity may have on the public interest, requires a careful weighing of all those factors that become relevant in each particular case. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process. That decision will reflect the national concern for both protection and utilization of important resources.

All factors that may be relevant to the proposal must be considered including the cumulative effects thereof. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

**9. CONSIDERATION OF COMMENTS:** The Corps of Engineers is soliciting comments from the public, Federal, State and local agencies and officials, Indian Tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

**10. SUBMISSION OF COMMENTS:** Interested parties may submit in writing any comments concerning this activity. Comments should include the applicant's name, the number, and the date of this notice and should be forwarded so as to reach this office within the comment period specified on page one of this notice. Comments should be sent to the Regulatory Branch at the address shown on the title page. It is Corps policy to forward any such comments, which include objections to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Additional details may be obtained by contacting the applicant whose address is indicated in the first paragraph of this notice, or by contacting Kelley Reid of our office

at telephone 707-443-0855 or E-mail:  
kreid@spd.usace.army.mil. Details on any changes of a  
minor nature that are made in the final permit action will  
be provided on request.